

## REMARKS

The last Office Action has been carefully considered.

It is noted that Claims 5-10 are rejected under 35 USC 102(e) over the patent to Shimma, et al.

Claim 10 is rejected under 35 USC 112, second paragraph, as being indefinite.

In connection with the Examiner's rejection of Claim 10, it is respectfully submitted that the expression "is located in a nip between individual ones of said battery cells" means that at least one duct is caught hold of and squeezed tightly between the individual ones of said battery cells, as explained for example in Merriam-Webster Dictionary, a copy of the respective page of which is enclosed. The same term is used in the Specification with the same meaning.

It is therefore believed that the Examiner's rejection of Claim 10 under 35 USC 112 should be considered as no longer tenable and should be withdrawn.

After carefully considering the Examiner's grounds for rejection of the claims over the art, applicant's retained Claim 5, the broadest claim on file, as it was, cancelled Claim 9, and added Claim 11 which is another independent claim currently on file.

Claim 5 specifically defines that in the battery back in accordance with the present invention, a wall of the housing (1) which surrounds the battery cells (2) is shaped so that it forms at least one duct (3, 4) which is closed off from an interior of the housing (1) and extends parallel to the longitudinal axis of the battery cells.

Turning now to the Prior Art applied by the Examiner, and in particular to the patent Shimma, it can be seen from Figure 3 that in the battery pack disclosed in this reference a duct (25) or (24) extends parallel to the orientation direction of the battery cells. However, the ducts are not formed so that they are closed off from an interior of the housing.

It is therefore believed to be clear that this reference does not disclose the above-mentioned significant feature of the present invention, which is now defined in Claim 5.

The Examiner rejected the claims over this reference under 35 USC 102(e) as anticipated. In connection with this, it is believed to be advisable to say that the decision *In Re Lindenman Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir 1984) in which it was stated:

“Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.”

Definitely, the patent to Shimma does not disclose each and every element of the present invention as now defined in Claim 5.

Therefore, the anticipation rejection of the claims should be considered as not tenable with respect to the Claim 5 and should be withdrawn.

The Examiner's attention is respectfully directed to the features of Claim 10. This claim additionally defines that the at least one duct (3, 4) is located in a nip between individual ones of the battery cells (2), or in other words is tightly squeezed between the battery cells. This feature is definitely not disclosed in the patent to Shimma as well.

Therefore, Claim 10 should be considered as patentably distinguishing over the art not only because it depends on the allowable Claim 5, but also because it contains an allowable subject matter per se.

The Examiner's attention is further respectfully directed to the features of Claim 11. First of all, it is respectfully submitted that Claim 11 does not raise any new issues for the examination and/or search because it combines the features of Claim 5 with the feature of Claim 10 that the at least one duct is located between individual ones of the battery cells. The patent to Shimma does not disclose a battery pack in which at least one duct not only extends parallel to the longitudinal axis of the battery cells and is closed off from an interior of the housing, but also is located between the individual ones of the battery cells.

Therefore, it is respectfully submitted that Claim 11 should also be considered as patentably distinguishing over the art and should be allowed.

As for the retained dependent claims, these claims depend on Claim 5, they share its allowable features, and therefore it is respectfully submitted that they should be allowed as well.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is

respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance; he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,

  
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## nip

6 entries found.

nip[1,verb]  
nip[2,noun]  
nip[3,noun]  
nip[4,intransitive verb]  
nip and tuck  
nip-up

Main Entry: **'nip**

Pronunciation: \ˈnip\

Function: *verb*

Inflected Form(s): **nipped; nip·ping**

Etymology: Middle English *nippen*; akin to Middle Dutch *nipen* to pinch, Old Norse *hnippa* to prod

Date: 14th century

*transitive verb*

**1 a** : to catch hold of and squeeze tightly between two surfaces, edges, or points : **PINCH**, **BITE** <the dog *nipped* his ankle> **b** : to pinch in (as a garment) <a dress *nipped* at the waist>

**2 a** : to sever by or as if by pinching sharply **b** : to destroy the growth, progress, or fulfillment of <*nipped* in the bud>

**3** : to injure or make numb with cold : **CHILL**

**4** : **SNATCH**, **STEAL**

**5** : to defeat by a small margin

*intransitive verb*

**1** : to move briskly, nimbly, or quickly

**2 chiefly British** : to make a quick trip

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